

# Collier Shannon Scott

Collier Shannon Scott, PLLC  
Washington Harbour, Suite 400  
3050 K Street, NW  
Washington, DC 20007  
202.342.8400 TEL  
202.342.8451 FAX

**Docket H054A**  
**Ex. 40-12-6**

January 3, 2004

OSHA  
DOCKET OFFICER  
DATE JAN 3 2005  
TIME

**VIA FAX (202) 693-1648**

Docket Office, Docket H054A  
Room N-2625  
Occupational Safety and Health Administration  
United States Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

**Re: Hearing Testimony on the Proposed Rule on Occupational  
Exposure to Hexavalent Chromium (CrVI), 69 Fed. Reg. 59305  
(October 4, 2004); Docket No. H054A**

Dear Sir or Madam:

On behalf of the Specialty Steel Industry of North America ("SSINA"), we provide Jack Shilling's testimony on the proposed rule on Occupational Exposure to Hexavalent Chromium ("CrVI"), 69 Fed. Reg. 59305 (October 4, 2004); Docket No. H054A, for the informal public hearing to be held in Washington, D.C. scheduled to begin on February 1, 2005. Dr. Shilling is the Executive Vice President of Corporate Development and Chief Technical Officer at Allegheny Technologies as well as the Chairman of SSINA. The contents of his testimony are provided in Attachment A. Dr. Shilling reserves the right to revise or supplement his remarks based on his review of materials submitted to the docket in this rulemaking. Please feel free to contact me with any questions.

Sincerely,



Kathryn M. McMahon-Lohrer

## ATTACHMENT A

### OUTLINE OF ECONOMIC FEASIBILITY TESTIMONY

1. Assessments of economic feasibility must meaningfully incorporate critical background considerations
  - a. OSHA's determination of economic feasibility hinges on the relationship between industry compliance costs and the industry's estimated revenues and profits.
  - b. OSHA's failure to make detailed feasibility determinations for each individual industry or sub-sector makes it impossible to determine whether the costs of compliance realistically "threaten the existence or competitive structure of an entire industry"
  - c. OSHA's economic feasibility determination was based on 2000 data although the 2000 data is not representative of the industry today
    - i. 5 of the top 8 U.S. steel producers went bankrupt since 2000
    - ii. 2 out of 3 of the remaining companies were acquired
2. OSHA's use of "Best Available Data" is neither representative or accurate for the specialty alloy industry
  - a. OSHA inappropriately relies on data from a 6-digit NAIC code, which is not the "best available" for the specialty steel industry
  - b. OSHA's inferences drawn from the specialty steel industry's small minority of the total steel industry are likely to be distorted and inaccurate
3. OSHA's reliance on revenues and profits as indicators of economic feasibility is misleading and inaccurate
  - a. A snapshot of steel industry conditions in 2000 is unlikely to reflect true economic feasibility
  - b. Revenues provide an unreasonable basis for assessing economic feasibility
  - c. Profits provide a more reliable but still potentially flawed basis for assessing economic feasibility
  - d. Cash flow measures provide the most reliable basis for assessing economic feasibility
4. OSHA relied on flawed data and assumptions in its profiles of iron and steel mills
  - a. OSHA relied on aggregated industry data and failed to account for marked differences in production practices
  - b. OSHA's determinations rely on outdated reference data
    - i. 2000 data is not representative of the present day industry
  - c. OSHA's methodology incorrectly treats each and every steel mill in the same manner
    - i. Stainless steel mills substantially differ from other steel mills in product prices, costs, and production processes
  - d. OSHA incorrectly relied on U.S. Census Bureau estimates to identify small alloy and stainless steel mills
  - e. OSHA's estimate of the percent of production workers exposed to Cr(VI) by job category is significantly understated
    - i. SSINA survey shows that OSHA's percentages are low

5. OSHA's calculation of industry revenues and profits should be more transparent and explicitly presented
  - a. OSHA's methodology makes it impossible to replicate its analysis with the information provided.
  - b. OSHA inexplicably fails to summarize and show the underlying data and calculations used to derive its revenues and profit estimates for the industry
6. OSHA's reliance on IRS statistics of corporation income for revenue data may result in double-counting of revenues
7. Additional background considerations for the specialty alloy industry
  - a. Conditions of significant global overcapacity and rampant unfair trade practices persist in the U.S. market
  - b. The presence of intense foreign competition makes U.S. producers especially vulnerable to increased costs not shared by the global industry
  - c. The U.S. industry has difficulty passing through input cost increases that are global in nature
  - d. The U.S. demand for specialty alloy products is largely inelastic
8. OSHA's economic feasibility analysis is legally inadequate
  - a. OSHA's exposure and cost of compliance analysis must be redeveloped
  - b. OSHA failed to provide a reasonable assessment of the likely range of costs of its standard and the effects of those costs on the industry
  - c. OSHA failed to adequately consider distinct segments of the industry